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Attorneys for Defendant USAA Federal Savings Bank

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

MARK EDWARD TOWNER, an individual,

Plaintiff,

v.

USAA FEDERAL SAVINGS BANK, a federal
savings bank, dba USAA Financial Services
Corporation,

Defendant.

**DEFENDANT USAA FEDERAL
SAVINGS BANK'S ANSWER**

No. 2:14-cv-00148-DN

Judge David Nuffer
Magistrate Judge Dustin B. Pead

Defendant USAA Federal Savings Bank ("USAA"), through its undersigned counsel and for its Answer to the Complaint [Dkt. 1] filed by plaintiff Mark Edward Towner ("Plaintiff"), hereby admits, denies, and alleges as follows:

1. USAA admits Paragraph 1 of the Complaint, although USAA denies that the USAA is liable to Plaintiff under 15 U.S.C. § 1681 *et seq.*
2. In response to Paragraph 2 of the Complaint, USAA admits that venue is proper and that it is a federal savings bank that transacts business in Salt Lake County, Utah. USAA denies all remaining allegations in Paragraph 2 of the Complaint.

3. USAA lacks sufficient knowledge or information to respond to the allegations contained in Paragraph 3 and therefore denies the same.

4. USAA denies the allegations in Paragraph 4 of the Complaint.

5. USAA admits Paragraph 5 of the Complaint, with the exception of the statement that USAA is “a ‘furnisher of information’ pursuant to 15 U.S.C. § 1681 of the FCRA”, as that section does not refer to furnishers of information.

6. Paragraph 6 of the Complaint is a legal conclusion to which no response is required.

7. USAA admits that 15 U.S.C. § 1681a contains the statements alleged in Paragraph 7 of the Complaint, but denies that the quoted statute in Paragraph 7 is complete.

8. In response to Paragraph 8 of the Complaint, USAA denies that it reported any “derogatory” and inaccurate information to Experian and Equifax regarding Plaintiff. USAA lacks sufficient knowledge or information to respond to the remainder of the allegations contained in Paragraph 8 and therefore denies the same.

9. USAA lacks sufficient knowledge or information to respond to the allegations contained in Paragraph 9 and therefore denies the same.

10. USAA lacks sufficient knowledge or information to respond to the allegations contained in Paragraph 10 and therefore denies the same.

11. USAA admits Paragraph 11 of the Complaint.

12. USAA denies the allegations in Paragraph 12 of the Complaint.

13. USAA denies the allegations in Paragraph 13 of the Complaint.

14. USAA denies the allegations in Paragraph 14 or lacks sufficient knowledge or information to respond to the remainder of the allegations contained in Paragraph 14 and

therefore denies the same. USAA admits only that Plaintiff informed USAA of his mother's passing and that USAA has in its possession a "USAA Power of Attorney" form signed by Elizabeth T. Welsh appointing Mark E Towner as attorney-in-fact, which was recorded in the records of the Salt Lake County, Utah Recorder.

15. USAA denies the allegations in Paragraph 15 of the Complaint.

16. USAA denies the allegations in Paragraph 16 of the Complaint.

17. With respect to Paragraph 17, USAA reincorporates each and every response contained above and incorporates the same herein by reference.

18. USAA denies the allegations in Paragraph 18 of the Complaint.

19. USAA denies each and every allegation contained in the Complaint not expressly admitted herein.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted against USAA and must, therefore, be dismissed.

2. USAA was not properly served with the Complaint and Summons.

3. Plaintiff's injuries, if any, were the result of the conduct of third parties over whom USAA had no control.

4. Plaintiff's injuries, if any, were the result of his sole and separate negligence, or of his contributory or comparative negligence, or of his assumption of the risk, and Plaintiff's claims are barred thereby, in whole or in part.

5. Plaintiff's claims are barred in whole or in part by Plaintiff's failure to mitigate damages.

6. Plaintiff's claims and damages are precluded in whole or in part by the negligence, or the comparative or contributory negligence of herself or his agent(s).

7. USAA conducted a reasonable investigation of any dispute by Plaintiff to USAA and/or received by USAA from a credit reporting agency regarding a dispute by Plaintiff.

8. There may be other affirmative defenses USAA is entitled to but of which USAA is not yet aware. USAA reserves the right to amend its answer to assert such additional defenses when they become known.

WHEREFORE, having fully answered each and every claim of Plaintiff's Complaint, USAA requests the following relief:

- A. That Plaintiff takes nothing by the Complaint and that the Court dismiss the claims set forth therein, with prejudice;
- B. Reasonable attorneys' fees pursuant to 15 U.S.C. §§ 1681o and 1681n; and
- C. For such other relief as this Court may deem just and proper under the circumstances.

RESPECTFULLY SUBMITTED this 1st day of April, 2014.

RAY QUINNEY & NEBEKER P.C.

By: /s/ John W. Mackay
John W. Mackay
Attorneys for Defendant USAA Federal Savings Bank

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2014, a true and correct copy of **DEFENDANT USAA FEDERAL SAVINGS BANK'S ANSWER** was filed with the Clerk of Court using the CM/ECF system, which sent notification of such filing to the following:

Mark Edward Towner
1331 Green Street
Salt Lake City UT 84105
Plaintiff pro se

/s/ Jennifer Dustin

1277883

Filename: RQNDOSCS-#1277883-v1-
Defendant_USAA_Federal_Savings_Bank_s_Answer
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Template: C:\Users\861\AppData\Local\Microsoft\Windows\Temporary
Internet Files\Content.MSO\55E1952D.dotm
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